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AUTHORITIES CITED

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 280

MISSOURI PACIFIC RAILROAD COMPANY, APPELLANT,

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS OF THE COURT BELOW

There are two opinions in this case. The principal one, filed March 31, 1924, sustaining a demurrer to the original petition, is in the record at pages 17–23, and is reported in 59 C. Cls. 524. The second, in which the court below, in disposing of a demurrer to an amended petition, affirms its previous action, is in the record at page 16 and is reported in 60 C. Cls. 183. The case before the Interstate Commerce Commission, *Railway Mail Pay case,* is reported in 56 I. C. C. 1–120.

JURISDICTION

The final judgment of the court below sustaining a demurrer to and dismissing the amended petition was rendered on January 19th, 1925, and the appeal was allowed February 2d, 1925. Therefore, the jurisdiction of this court is invoked under Section 242 of the Judicial Code, at is was before the Act of February 13th, 1925, c. 229, 43 Stat. 936.

STATEMENT

By the Act of July 28, 1916, c. 261, Sec. 5, 39 Stat. 412, 425, 430 (printed as an appendix hereto), Congress conferred upon the Interstate Commerce Commission power to fix the rates to be paid to railroad companies for carrying the mails and provided (appendix, pp. 35–48):

> The Interstate Commerce Commission shall allow the railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress on condition that the mails should be transported over their roads at such price as Congress should by law direct only 80 per centum of the compensation paid other railroads for transporting the mails and all service by the railroads in connection therewith.

The Commission fixed a rate based upon space per mile, and in accordance with the Act allowed the plaintiff 80 per cent of that rate upon "land-

grant portions of its system." The plaintiff sued to recover the sum of $189,880.50, alleged to be the difference between the amount which it had received for carrying the mails and the sum to which it was entitled. It concedes the power of Congress to authorize the Commerce Commission to fix rates, and also concedes that the basic rate fixed was fair and reasonable. It concedes the power of Congress to fix the pay for land-grant roads for "transporting" the mails, but draws a distinction between what it regards as transportation proper and the service performed in connection with so-called railway post office cars, and denies the power of Congress under the land-grant Acts to fix its pay for the latter service, at a rate lower than for non-land-grant roads. Accordingly it has attempted to separate the space in those cars devoted to "distributing" mail matter from the space devoted to what it calls "transporting" it, and divides the pay received for hauling a car in proportion to the space devoted to the two purposes. The sum sued for represents the 20 per centum deduction from the basic rate for those portions of the "Full Railway Post Office Cars," the "30-foot Mail Apartment Cars," and the "15-foot Mail Apartment Cars" which, according to the calculation, were used for "distribution" and not for "transportation."

THE FACTS

The plaintiff's petition (R. 1-15) sets forth at great length many facts, conclusions, and portions of statutes from which may be deduced the following:

Since June, 1917, upon which date it became the successor to the systems theretofore owned by The Missouri Pacific Railway Company and The St. Louis, Iron Mountain & Southern Railway Company, and excluding the period of Federal control, the appellant has operated its railroad, which includes land-grant lines in Missouri, Arkansas, Colorado, Illinois, Kansas, Louisiana, and Oklahoma. (R. 1.) Under the Acts of June 10, 1852, c. 45, Sec. 6, 10 Stat. 8, 10, and February 9, 1853, c. 59, Sec. 6, 10 Stat. 155, 156, its predecessors received two land grants from the United States in aid of construction. The first of these acts provided (R. 2):

> That the United States mail shall at all times be transported on said railroads under the direction of the Post-Office Department, at such price as Congress may by law direct.

The second Act provided:

> That the United States mail shall at all times be transported on said road and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct.

Those portions of its system thus aided are within certain numbered mail routes, and the plaintiff and its predecessors have in the operation of its

lines of railway complied with the obligations imposed upon them by the acts of Congress.

In Paragraph III is set forth with much detail the receipt, distribution, and delivery of mail matter generally. It is alleged that the distribution and redistribution of mail was made in post offices for years after the establishment of railroads as post roads and mail carriers; that thereafter the Post Office Department inaugurated a system whereby a portion of the distribution should be made by postal employees in railway cars fitted up with letter cases, tables, racks, and other fixtures similar to the facilities provided and used for like purposes in ordinary post offices, commonly known as "railway post offices"; that such distribution was unknown and no such cars were in use or existence on any railroad in the United States at the time of the making of the petitioner's land grant; that the furnishing of railway post-office cars for distribution greatly increased the space required and the expense incurred by railroad companies beyond that required and incurred in the mere transportation of the mails (R. 3); that train distribution has been recognized and undertaken by the Post Office Department as a function of that Department and as not embraced under any statutory or contractual obligation of the railroads to transport the mails, and that the distributing service has been performed solely by postal employees riding in the cars, from which

cars railway employees are excluded, except to the extent that train crews are required to pass through the cars in the discharge of their duties (R. 3 and and 4).

It is alleged that by the Act of March 3, 1873, Congress provided a scale of rates for compensation for transporting the mails, and also provided for additional allowances for furnishing railway post-office cars; that by the Act of July 12, 1876, it was provided that land-grant roads should receive but 80 per centum of the compensation accruing to other roads under the rates of pay authorized by Congress for such other carriers, which provision of law remained in force until the passage of the Act of July 28, 1916.

It is alleged that after the Act of July 12, 1876, the plaintiff and all other land-grant roads received but 80 per cent of the rates authorized for payment to other railroads according to the scale from time to time fixed by Congress, but that for services in furnishing railway post office cars, until November 1, 1916, they received the same compensation as other railroads for the performance of like service, and that such practice constitutes a contemporaneous construction of the plaintiff's land grant, whereby the furnshing of said cars was treated as a service separate from, and in addition to, the transportation of the mails, and as not embraced within its obligation to transport mails

at such price as might be fixed by Congress. (R. 5.)

It is alleged that prior to the Act of July 28, 1916, the transportation of mails was by means of voluntary contracts between the companies and the Post Office Department, on the basis of weights ascertained according to law, with additional payments for full railway post-office cars; that the Act of July 28, 1916, made it the duty of railway companies to provide the services defined therein, as required by the Postmaster General, and imposed fines and penalties for failure or refusal; that the services so required include both transportation of the mails and the furnishing of full railway post-office cars and apartment railway post-office cars described collectively as "railway post-office cars;" that such cars are constructed according to plans and specifications of the Department which, in addition to space provided for transportation, contain space occupied by "distributing facilities," which are provided in the cars solely for the purpose of opening pouches and distributing their contents by postal employees, according to destination, into appropriate containers for transportation and delivery. (R. 6.)

The petition sets forth several provisions of the Act, including that requiring the railroads to place cars in stations before the departure of trains, as required, and alleges that this purpose is to enable the Post Office Department to perform in the cars

its administrative function and distribution in advance of the transportation. (R. 7.)

It is further alleged that the distribution space in the cars is physically separated from the remaining space therein and is susceptible of actual measurement, and that the Interstate Commerce Commission found that in standard railway post office cars the total linear feet of space is as follows (R. 9):

Unit	Distribution space		Doorways		Storage space	
	Feet	Inches	Feet	Inches	Feet	Inches
60-foot full railway post-office car	36		7	8	16	4
30-foot mail apartment car	17	2	2	10		
15-foot mail apartment car	7	.75	2	6		

It is then alleged that the distribution of space in railway post office cars furnished by the plaintiff over its land grant routes between June 1, 1917, and June 31, 1917, and between March 1, 1920, and December 31, 1923, was substantially as represented by the foregoing table; that during said period plaintiff performed 3,438,350 miles of service in full railway post office cars over its land grant routes; 2,082,906 miles of service in 30-foot apartment railway post office cars over said routes, and 1,089,158 miles of service in 15-foot railway apartment cars over said routes; that not less than 60 per cent of the space furnished in railway post office cars, not less than 56⅔ per cent of the space furnished in 30-foot apartment cars, and not less than

46⅔ per cent of space furnished in 15-foot apartment cars consisted of distributing space. (R. 9.)

It is further alleged that neither the distributing facilities nor any part of the distribution space in these cars is necessary for transporting the mail, but is provided solely to enable the Post Office Department to utilize the time in transit for distribution. (R. 10.)

It is further alleged that the Interstate Commerce Commission found that the space basis of pay should be adopted and continued, and fixed as fair and reasonable rates between November 1, 1916, and January 1, 1918, the following (R. 12):

	Cents
For each mile of service by a 60-foot R. P. O. car	27
For each mile of service by a 30-foot Apartment car	15
For each mile of service by a 15-foot Apartment car	10
For each mile of service by a 60-foot Storage car	28
For each mile of service by a 30-foot Storage space	15
For each mile of service by a 15-foot Storage space	8
For each mile of service by a 7-foot Storage space	4½
For each mile of service by a 3-foot Storage space	2½
For each mile of service by a 15-foot Closed-Pouch space	10
For each mile of service by a 7-foot Closed-Pouch space	5
For each mile of service by a 3-foot Closed-Pouch space	3

and for services performed after January 1, 1918, rates 25 per cent. in excess of that scale.

It is further alleged that under the land grant acts the duty of the plaintiff is limited to transporting the mails at such rates as may be fixed by Congress, and that it is not bound in addition thereto to furnish facilities for distribution on its trains or cars and to transport the distributing agents of the Post Office Department at such rates as may be fixed by Congress; that for all such ad-

ditional service performed over its land-grant mileage it is lawfully entitled to just and reasonable compensation, the same compensation accruing to it for the performance of like service on that portion of its lines not within its land grant mileage, and that by reason of the premises it is entitled to be paid "pro rata for all distribution space furnished and hauled by it over its Land Grant Mileage" at the scheme and rates of pay established by the Commerce Commission for services performed in furnishing and hauling railway post office cars, for payment of which demand has been made of the Postmaster General; but notwithstanding, all payments made by the Postmaster General have been made at the rate of 80 per centum, the rate fixed by the Commerce Commission for the services so rendered, without distinction as between space provided for transportation and space provided for distribution, by reason whereof the Postmaster General has wrongfully withheld the sum of $189,880.54. (R. 13, 14.)

CONTENTIONS OF UNITED STATES

(1) The petition does not state a cause of action justiciable in the Court of Claims.

(2) The furnishing of facilities in the so-called railway post-office cars is included in the transportation for which Congress has power to fix the pay under the Land Grant Acts.

(3) No cause of action based upon the failure to receive just compensation is set forth in the petition.

ARGUMENT

I

THE PETITION DOES NOT STATE A CAUSE OF ACTION JUSTICIABLE IN THE COURT OF CLAIMS

Stripped of all disguise, this action is in reality an attempt to set aside an order of the Interstate Commerce Commission. That Commission, empowered by Congress, has fixed a rate to be paid for carrying the mails. The plaintiff has received and retained pay in accordance with those rates. Until modified by the Commission or set aside by a court of competent jurisdiction, they are the only rates that may lawfully be received or paid. The plaintiff, however, seeks through the Court of Claims to recover pay at a rate other than the rate lawfully established. The Court of Claims is without power to grant the prayer of such a petition.

The Act of 1916 inaugurated a new policy for fixing compensation to the railroads for mail service. As pointed out by the Interstate Commerce Commission, 56 I. C. C., pages 63 and 64, for many years there had been "ceaseless controversy" between the railroads and the Post Office Department over that question. Commissions and committees, in 1878, 1883, 1901, 1911, and 1914 had, after investigation, made reports on the subject of railway mail pay. In 1914 a committee's report was to the effect that the space basis system should be adopted, and that report resulted in the passage of the Act of July 28, 1916.

That Act authorized the Postmaster General to state railroad mail routes and authorized mail service thereon of four classes (39 Stat. pp. 412, 425, appendix pp. 35–48):

(1) Full railway post office car mail service by cars 40 feet or more in length constructed, fitted up, and maintained for the distribution of mails on trains.

(2) Apartment railway post office car mail service, that is, by apartments less than 40 feet in length constructed, fitted up, and maintained for the distribution of mails on trains, and for this service two standard sizes of apartment cars were authorized, namely, apartments 30 feet in length and apartments 15 feet in length.

(3) Storage car mail service by cars used for the storage and carriage of mails in transit other than by full and apartment railway post office cars.

(4) Closed pouch mail service, the transportation and handling by railroad employees of mails on trains on which full or apartment cars were not authorized, this service to be for units of 7 and 3 feet in length.

The present case involves only the two classes of service first mentioned, full post-office cars and 30 and 15 foot apartment cars.

After authorizing the Postmaster General to pay at rates not exceeding those named in the Act pending determination of rates by the Interstate Commerce Commission, the Act left the whole question to that Commission, which was authorized—

> * * * to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force until changed by the Commission after due notice and hearing. (Sec. 5, 39 Stat. 412, 429, appendix p. 45.)

Pursuant to the statute, the Commission, after an exhaustive hearing at which the Postmaster General and the railroads were represented, made its report on December 23, 1919 (56 I. C. C. 1). From this report it appears that the Post Office Department and the railroads each submitted a plan; that of the Department a "space basis" system (56 I. C. C. 47), that of the railroads a "weight basis" system, except only so far as railway post office apartment cars and closed pouch service were concerned, the transportation of the cars to be paid for on the basis of a car-mile rate with respect to the linear feet of distributing space in each car (56 I. C. C. 53, 55), and the contention was made by the railroads that the 80 per cent provision for land-grant railroads should not apply to the distributing space in railway post office and apartment cars, "because the service of carrying distributing facilities can not properly be construed as transportation of the mails as defined in the law." The exact

claim now urged, therefore, was urged before the Commission. (56 I. C. C. 77.)

The question was complicated by the necessity of providing for " initial and terminal " compensation, that is, the services performed in receiving and delivering mails at terminals and intermediate post offices and postal stations. Under the statute, pending the determination of the Commerce Commission, the Postmaster General was authorized, in addition to the other rates provided, to allow initial and terminal rates, as for instance, an allowance not exceeding $4.25 as a combined initial and terminal rate for each one-way trip of a 60-foot car. (39 Stat. 426.)

After considering all phases of the situation, the Commission concluded that the space basis system should be followed, and that the initial and terminal allowances should be canceled and abolished, payment in lieu thereof being included in the rates which it prescribed. (56 I. C. C. 77.)

The claim on behalf of the land-grant railroads was not sustained the Commission saying, 56 I. C. C. 77):

> We are not convinced that Congress intended that services in connection with transporting the mails on land-grant railroads, such as furnishing and hauling distributing facilities, should not be subject to the reduction referred to.

The statute said (39 Stat. 430):

> The Interstate Commerce Commission shall allow to railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress on condition that the mails should be transported over their roads at such price as Congress should by law direct only 80 per centum of the compensation paid other railroads for transporting the mails and all service by the railroads in connection therewith.

The Commerce Commission, in overruling the contention of the land-grant roads, followed the unmistakable command of the statute.

We have, then, a case where a most complicated and vexatious problem was submitted by Congress for solution to a Commission peculiarly competent to investigate and determine it fairly, and a result which is probably as nearly just as intelligent, painstaking, and laborious thought can produce. Considering all the different elements, and including the initial and terminal compensation, it fixed a flat rate for each mile of service *per car* according to the size of the car in the case of post office, apartment, and storage cars, and for each mile of service *by space* in other cars.

It is apparent that these rates must be considered as forming one homogenous system. If something is to be taken from it here or added to it there, the symmetry of the whole structure will be destroyed. When the Commission fixed a rate of

27 cents per mile for a 60-foot railway post office car, it did not, and probably could not, with any degree of certainty say how much of that 27 cents was pay for initial and terminal service, how much for carrying a ton of mail matter, how much for carrying the postal employees, how much for cleaning, lighting and heating the car, and how much for carrying tables and racks. To be sure, it is probably possible to estimate with a fair degree of accuracy the number of feet in a car which, on the average, is devoted to distribution, but when the attempt is made to apportion the rate per car upon that same basis it is by no means sure that the result will be a fair and reasonable one.

In discussing the subject of the proper basis of payment, the Commission points out (56 I. C. C. 65) that the largest quantity of mail is transported in full storage cars, and that the average load in such cars is about 6½ tons, while a steel storage car weighs 50 tons; that the average load in the railway post-office cars is about 2½ tons and the weight of the car about 60 tons, and if the railroad is required to haul 50 tons of car weight in hauling 6½ tons of mail, and 60 tons of car weight in hauling 2½ tons of mail, the chief source of expense is in transportation of the car. Without attempting to follow the exhaustive examination of the Commission into all these elements, it is sufficient to say that the result reached was not intended to be a rate for one particular car at any particular time, upon

any particular railroad, or in any particular train over any particular distance, much less for any one foot of space in such a car. It was to be universal in its application, and its fairness and reasonableness follows upon its universal application. If the weight basis had been adopted, the result in the case of any one car might have been quite different. If the space basis had been adopted in part and the weight basis in part, the space rate would, of course, have been quite different. A combination of all factors, reduced to a space basis, and universally applied, makes the rate just.

Plaintiff alleges in its petition (R. 9 and 10) that it takes three full 60-foot railway post-office cars to transport the same volume of mail that is transported in one ordinary baggage car wherein carloads of mail are carried without distribution. The rates established by the Commission gives the company 27 cents a mile for each 60-foot railway post-office car, and 28 cents a mile for a 60-foot storage car. Under the rates established, taking into account the land-grant deduction, the plaintiff would receive 64.8 cents a mile for hauling three railway post-office cars, and 67.2 cents a mile for hauling three 60-foot storage cars. The average load of the three storage cars would be about 19½ tons, while the average load of the three post-office cars would be about 7½ tons. If the plaintiff had been allowed more for hauling the post-office cars, with their comparatively light load, it is by no means certain that

the Commission would have allowed them so much for hauling the storage cars. If the Commission had, as suggested by the railroads, adopted a weight basis for transportation and a space basis for distribution, or if in any way they had separated distribution from transportation, it is by no means certain that the space rate in any particular type of car would have been the same as it is now. As the ruling of the Commission now stands, it is plain that it is impossible to determine what portion of the basic rates can be set apart for initial and terminal facilities, or for distribution, or for transportation, or for the other facilities furnished in the car. To attempt to do so is to destroy the symmetry of the whole structure, which the Commission so carefully and laboriously erected.

For the Court of Claims, therefore, to award a judgment in accordance with the petition would be to nullify and set aside the order of the Commerce Commission. The rates established by the Commission were regarded by it as fair and reasonable upon the basis which they employed. We can not say, nor can any one say, that any one rate would be fair and reasonable except in connection with the other rates. The Commission's rates are by statute to continue in force until changed by the Commission after due notice and hearing, and the statute says of the order establishing rates that during the continuance of the order "the Postmaster General shall pay the carrier from the ap-

propriation herein made such rate or compensation." (39 Stat. 430, appendix p. 47.)

Neither the Court of Claims nor any other court has any right to direct payment at any other rate than that fixed by the Commerce Commission, as long as its order stands, and if the Court of Claims had attempted to comply with the prayer of the petition it would have been nothing more or less than to order a payment in violation of the statute. This the Court of Claims very properly held it could not do. Section 145 of the Judicial Code gives that court no such authority. It is not a claim founded upon an act of Congress, but in direct violation thereof. It is not founded upon the regulations of any executive department, or upon any contract express or implied. Claiming that its action is based upon a law of Congress, the plaintiff asks to be paid a sum additional to what the Act allows. As the Court of Claims says (R. 22), the claim can not be under the statute and against it at the same time. Neither is there any contract, express or implied, to pay anything except the rates established by the Commission pursuant to the statute, nor is the claim based upon the Fifth Amendment. *Klebe* v. *The United States,* 263 U. S. 188, 189, 192; *United States* v. *North American Company,* 253 U. S. 330, 335. The statute itself gives any carrier at any time after the lapse of six months, the right to apply to the Commission for a reexamination, and the Urgent Deficiencies Appropriation Act of October 22, 1913, c. 22, 38 Stat. 208, 219, 220, provides

for review of final orders of the Interstate Commerce Commission.

As the Court of Claims says (R. 21):

> The Commission determined the compensation allowable for certain types of cars for "each mile of service," and the statute provides that the land-grant road shall receive 80 per cent of this compensation which the ascertained rate produces for each mile of service. The plaintiff has been paid accordingly. The ascertainment of the compensatory rate to the method to be adopted are confided to the Commission and not to the Court of Claims.

And further (R. 22):

> The Commission has not ascertained the values of the space or fixed compensation in the way suggested. They fixed compensation for the car, and all its space. The act authorizes the Postmaster General to prescribe the kind of car and authorizes the Commission to fix compensation on the space method. On the other hand, the court is not authorized to prescribe the method or fix compensation, and it can not assume that because the Commission fixed a rate per mile for the entire car, it fixed, or intended to fix, a separate basis of compensation for each of the different spaces used in it. As already said, distribution of the mails can not be entirely separated from their transportation. The plaintiff has been paid for the service rendered in accordance with the rates and compensation fixed by the Com-

mission, and, so far as appears, received the payments as they accrued without protest or objection.

II

THE FURNISHING OF FACILITIES IN THE SO-CALLED RAILWAY POST OFFICE CARS IS INCLUDED IN THE TRANSPORTATION FOR WHICH CONGRESS HAS POWER TO FIX THE PAY UNDER THE LAND GRANT ACTS

The history of the railway mail service affords no basis for the claim that either Congress or the Post Office Department has ever recognized any distinction in principle between transporting the mails and distributing them in transit, but, on the contrary, both have treated the service as a unit with one exception presently to be noticed. (See *History of Railway Mail Service,* transmitted to the Senate on January 21, 1885, by the Postmaster General pursuant to Resolution of the Senate of January 19, 1885, and printed at the Government Printing Office, 1885.)

The first regular railway post office car seems to have been introduced into the postal service in 1862 on the Hannibal & St. Joseph Railroad between Quincy, Illinois, and St. Joseph, Missouri, for the purpose of distributing the California Overland mail, thereby avoiding the delay at St. Joseph and the missing of the regular connection with the stages departing from St. Joseph to the West. (*History of the Railway Mail Service,* p. 81.) Since that time the railroads have furnished cars

of this class under the direction of the Post Office Department. Long before that, however, the distribution of mail matter in transit was carried on by government employees known as "route agents," certainly as far back as 1843. The duties of these route agents, is set forth in the Postal Laws and Regulations of 1843, c. 37, Sec. 243, which states that their business is "to assort the mails for the several post offices, being entrusted with the key to the iron lock for that purpose." In the Regulations of 1852, c. 33, Sec. 201, it is directed that "It is the duty of route agents * * * 2d, To assort the mails for the several offices * * *." The same instruction is carried in the Regulations of 1857, c. 15, Sec. 184. The Postmaster General, in his annual report for 1853, reported compensation paid for route agents in the sum of $165,224.55.

That the transportation of the mails has always included such distribution of the mails en route on trains as the Postmaster General might arrange for, is further conclusively shown by an examination of his Annual Reports, where mention is made from time to time of the employment of mail agents on railway trains making distribution of the mails. In his Report for 1853, page 5, he comments on the insufficiency of the mail cars and the want of proper accommodations by reason of which mail agents were unable properly to discharge their duties, then becoming more important owing to the increase in

the way distributions. He reports that to remedy this evil he had prepared a model of a mail car which he had transmitted to the different railroad companies and that in those cases where the contracts gave him power to build a mail car, when the one furnished was unsuited to the purpose, he had ordered it done and charged the cost to the company.

In his Report for 1854 he comments again upon the necessity for accommodations in cars for distribution purposes, and refers to cars 25 feet in length, 15 feet of which was used for mail room " and 10 for a post office," and further states that such accommodations are required both for the security of the mails, and to enable the route agents properly to discharge their duties.

In the Annual Reports for 1855, page 6; 1857, pages 15, 16 and 17; 1858, pages 3 and 4; 1859, page 17; and 1860, page 2 ,further reference is made specifically to the work of the route agents and the cost of such service.

It was in 1862 that a definite move was made to specialize the distribution of mails en route on trains on a larger scale by the use in a greater degree of full cars, fitted up and furnished for railway mail or distribution purposes. *History Railway Mail Service,* pp. 81 *et seq.* This was in no sense a change in the system that had been in a lesser degree in effect during the preceding years. With this enlargement, this full-car service began

to be known as a traveling post office, but it was still a part of the transportation service without any distinction being made whatever as to the amount or character of pay given the railroads for the service as a whole.

Beginning with the Report for the fiscal year of 1867, the Postmaster General set forth in a table "size, etc., of mail car or apartment," in connection with each route, the full or complete car used for distribution purposes, or railway post office, designated as "R. P. O." Apartments for the distribution of mails are indicated by lesser lengths in the car where fixtures and furniture are furnished. The symbols for this equipment are indicated in the tables. Where mails were merely carried in the baggage car, such fact is also indicated. (See table "E" of the Report for 1867.) It will be noted from this that distribution space in varying lengths running from a minor part of a car to the full car was a condition prevailing throughout the service. No special rate was allowed for this facility, the rate per mile per annum being fixed under the Act of March 3, 1845, c. 44, 5 Stat. 732, 738, for the transportation of the mails, including all car facilities.

See also table "E" of the Reports of the Postmaster General for 1868 to 1872, inclusive. The reports for subsequent years show like data.

Prior to 1872 the railroads received no pay for furnishing railway post office cars except upon the straight basis of transportation. By the Act of

June 8, 1872, c. 335, Sec. 265, 17 Stat. 283, 316, it was provided that the Postmaster General might allow additional pay to any railroad with which he contracted for carrying the mail, which furnished "railway post office cars for the transportation of the mail," such additional compensation beyond that allowed by law as he might think fit, not exceeding, however, 50 per centum of the lawful rates.

By the Act of March 3, 1873, c. 231, 17 Stat. 556, 558, Congress provided for a general readjustment of rates based upon an actual weighing of the mails carried, and repealed the provision of the Act of June 8, 1872, for paying of additional compensation for railway post office cars. The authorized rates were to be paid upon condition—

> * * * That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures and furniture, in a car or apartment properly lighted and warmed, shall be provided for route-agents to accompany and distribute the mails;

And it was also provided " that additional pay may be allowed for every line comprising a daily trip each way of railway post office cars " at rates varying from $25 per mile per annum for 40-foot cars to $50 per annum for cars over 55 feet in length. No additional pay, however, was allowed for such cars under 40 feet in length. That provision, in substance, was carried into Section 4004 of the Revised Statutes. The facilities referred

to in that Act were the same as those which have grown up in the development of the service, and which are now recognized as a part of transportation. The rates fixed by the statute applied to all roads.

It was not until 1876 that Congress, by the Act of July 12, 1876, c. 179, Sec. 13, 19 Stat. 78, 82, exercised its power to fix the price for the transportation of the mails by land-aided railroads. It provided:

> Railroad companies whose railroad was constructed in whole or in part by land grant made by Congress * * * shall receive only 80 per centum of the compensation authorized by this act.

This Act directed the Postmaster General to reduce by 10 per cent the compensation of railroads for transporting the mails from the rates fixed, on the basis of weight, by the Act of March 3, 1873, but contained no provision relating to the pay authorized by the Act of 1873 for full railway post office cars upon a mileage basis. The Post Office Department, in administering it, applied its terms to the pay for everything carried upon a weight basis, including the furnishing of facilities for handling and distributing mails in apartment railway post office cars, and excluding only the specific additional pay provided by the Act of 1873. The additional pay provided by that Act was only for lines of full railway post office cars 40 feet or more in length, making a daily trip each

way. The annual reports of the Postmaster General show such a construction. In no instance has it been applied to cars of less than 40 feet in length or to apartment cars, although the same distribution was carried on in each.

Historically, therefore, there is no room for doubt that the furnishing of railway Post Office facilities in such cars has always been considered an essential part of " transportation." From the very beginning it has been recognized that Congress has had full authority thereover, and this power has not been impaired by any such distinction as appellant now draws between the transportation of the mails and the furnishing of distribution facilities in Post Office cars. Therefore, the term " transportation of the mails " includes not only the furnishing of distribution facilities in connection therewith, but all other incidental services appertaining to and essential for the efficient transportation of the mails.

As pointed out by the Interstate Commerce Commission (56 I. C. C. 77), while the distribution of the mails is being carried on in Post Office apartment cars the same mail is being hauled in the racks and partitions therein provided. The very nature of this particular service is so closely connected or related to the transportation of the mails under this system, which has been in use for many years, that it can not be considered as being separate and distinct in the manner for which appellant contends.

All that has been said herein with regard to the extent of the control that may be exercised by Congress with regard to the transportation of the mails applies with equal force to the terms of the land-grant reservations upon the question of remuneration for such services. What constitutes transportation of the mails in the one case applies with equal force in determining the meaning of the same term in the other. The legislative authority is coextensive in each case.

There is no justification for a narrower view, and never has a narrower view been applied to land-grant railroads. It is true that the Act of 1873 authorized additional pay for all railroads furnishing daily trips each way of railway post office cars 40 feet or more in length, at a flat rate per car per mile per annum, at a time when other service was paid for upon a weight basis. Obviously it was fair so to do, for the weight carried in such cars is out of all proportion to the space occupied in comparison with storage cars, but when the whole service is adjusted upon a space basis that discrepancy disappears. It is also true that the Act of 1876, reducing the pay of all railroads for mail transported upon a *weight* basis, and making a 20 per cent deduction for land-grant roads, was not interpreted as making the land-grant rate applicable to 40-foot post office cars for which a special rate had been authorized by the Act of 1873. That, however, can not be construed as recognition of the principle for

which the plaintiff contends, or as a recognition by Congress or the Department, of a lack of power in Congress over the whole subject, for the land-grant deduction was still applicable, and was applied, to the other service similar in character. That Congress did not exercise its power in respect to land-grant railroads until 1876, did not deprive it of its power to do so, nor does the fact that it did not then exercise the power completely, constitute a waiver of any portion of that power. The power existed at all times to be exercised when, if, and as Congress should determine.

The Act of 1916 took the service as it was, merely changing the basis of pay from a system measured by weight, frequency and speed, to a system measured by space. Weight was wholly abandoned and space adopted in its stead. This necessitated a redescription of the service stated under the four divisions already noted. The services were the same stated in different terms, and all constitute "transportation of the mails." With this change additional pay for a special type of car disappeared.

The land-grant acts are not to be construed so narrowly as to render their operation impracticable. As the Court of Claims says (R. 20):

> When they declare that the mails shall be transported under the direction of the Post Office Department we think they imply more than the mere placing of the mails in bulk in a car to be carried between given termini. The bulk changes by additions to it and sub-

tractions from it. The making of these additions and subtractions as the different stations are reached involves space additional to that occupied by the bulk itself. What is to be transmitted is not mere weight bulk or freight but the "mails" and the act must be construed to give effect to its purpose.

The words in the Act that the mails shall be transported " under the direction of the Post Office Department " must be given effect. Mails were to be transported in such manner and according to such methods as the Department, acting according to law, should direct, and the right was reserved by Congress to fix the pay for transportation thus determined and directed. The power reserved by Congress to fix the price was the power to fix the price for transporting them according to the manner and system directed by the Department under the law. It may be that the railroads, when they accepted the land grants, did not forsee the development of the postal service. It may also be that Congress did not forsee the development of the railroad system. To say that the right of Congress to fix the pay must be limited to the methods employed 75 years ago, is as illogical as it would be to say that it could be exerted only over the primitive single-track, sand-ballasted road, equipped with wooden cars, hauled by wood-burning engines, which then was regarded as the ultimate and crowning triumph of man's effort to annihilate distance by speed.

III

NO CAUSE OF ACTION BASED UPON FAILURE TO RECEIVE JUST COMPENSATION IS SET FORTH IN THE PETITION

Just compensation for the services performed by a common carrier is a fair and reasonable rate. The plaintiff concedes that the only service for which it is entitled to be paid at fair and reasonable rates is that which remains after strict " transportation " has been eliminated, for, as to the latter, the plaintiff is entitled to receive only what Congress chooses to give. When Congress made the grants of land it reserved a substantial right, the right to limit payment for transportation of the mails to such amount as it deemed proper, computed upon any basis it deemed appropriate. Using 20 per cent. of the basic rate paid other railroads for the entire service as a means of measuring the extent to which it would exercise that right, has not deprived the plaintiff of those portions of the basic rate for distribution which it seeks to recover.

Assuming *arguendo,* (1) that Congress can fix the price only for mere " transportation of the mails," giving to that term the narrow construction to which appellant contends; (2) that the Interstate Commerce Commission in fixing the rates has actually divided these cars upon a space basis according to the facilities of fixtures furnished therein; (3) that it is possible to divide the

basic rates according to such space allotment, and (4) that all the miscellaneous services which are included in the flat rates can be separated therefrom without fixing new rates, let us examine the situation mathematically.

Conceding that the basic rates are fair and reasonable; that is, compensatory, the claim of the plaintiff is that 60 per cent of the space furnished in a full 60-foot railway post-office car, 56⅔ per cent of the space furnished in a 30-foot apartment car, and 46⅔ per cent of the space furnished in a 15-foot railway apartment car, consisted of distributing space for which it is entitled to receive the basic rate without land-grant deduction. The basic rate for a 60-foot car is 27 cents per mile, and the land-grant rate, 80 per cent thereof, is 21.6 cents. Sixty per cent of the space is distribution space for which it is entitled to the full rate; that is, 16.2 cents. If the entire land-grant deduction is taken from the basic rate for the balance of the car, it leaves 5.4 cents as the amount received by it for the rest of the service. The result is that the plaintiff receives the full compensatory rate for the service for which it claims it is entitled to that rate, and 5.4 cents as pay for the service for which Congress admittedly may pay what it chooses. Similar calculations, differing only in amounts, show similar results with respect to the 30-foot and 15-foot cars. Applying the unit, therefore, fixed by Congress as the factor for measuring the applica-

tion of its power over land-grant railroad rates, it leaves the plaintiff with the full compensatory rate for that portion of the service over which it has claimed Congress is without power. When a common carrier claims that a certain rate deprives it of its property without due process of law, it must show as a fact that the rate complained of is not compensatory. If Congress had fixed a flat rate for land-grant railroads for strict transportation at 5.4 cents per mile in full 60-foot cars, and the Interstate Commerce Commission had fixed 16.2 per mile for the rest of the car, the result to the company would have been the same. Of course we do not claim that the Commerce Commission actually figured the rates in this way, but we have just as much right to figure them this way in order to sustain the Commission's action, as the plaintiff has to figure them in some other way in order to defeat it.

Congress is not required to pay 80 per cent of the fair rate for transportation over land-grant roads. It could have fixed a price much lower, and we submit that when it fixes 80 per cent as a basis of measurement and the result leaves the railway in receipt of the full compensatory rate for such portion of the service as it is without power to fix, with a wide margin of pay remaining, it can not be said that the net result is noncompensatory.

CONCLUSION

THE JUDGMENT OF THE COURT OF CLAIMS SHOULD BE AFFIRMED.

WILLIAM D. MITCHELL,
Solicitor General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

RANDOLPH S. COLLINS,
Attorney.

APRIL, 1926.

APPENDIX

Section 5, Act of July 28, 1916 (c. 261, 39 Stat. 412, 425–431):

SEC. 5. That the Postmaster General is authorized and directed to readjust the compensation to be paid to railroad companies from and after the thirtieth day of June, nineteen hundred and sixteen, or as soon thereafter as may be practicable, for the transportation and handling of the mails and furnishing facilities and services in connection therewith upon the conditions and at the rates hereinafter provided.

The Postmaster General may state railroad mail routes and authorize mail service thereon of the following four classes, namely: Full railway post-office car service, apartment railway post-office car service, storage-car service, and closed-pouch service.

Full railway post-office car mail service shall be service by cars forty feet or more in length, constructed, fitted up, and maintained for the distribution of mails on trains. The authorizations of full railway post-office cars shall be for standard-sized cars sixty feet in length, inside measurement, except as hereinafter provided [p. 425].

Apartment railway post-office car mail service shall be service by apartments less than forty feet in length in cars constructed, fitted up, and maintained for the distribution of mails on trains. Two standard sizes of apartment railway post-office

cars may be authorized and paid for, namely, apartments fifteen feet and thirty feet in length, inside measurement, except as hereinafter provided.

Storage-car mail service shall be service by cars used for the storage and carriage of mails in transit other than by full and apartment railway post-office cars. The authorizations for storage cars shall be for cars sixty feet in length, inside measurement, except as hereinafter provided: *Provided,* That storage space in units of three feet, seven feet, fifteen feet, and thirty feet, both sides of car, may be authorized in baggage cars at not exceeding pro rata of the rates hereinafter named for sixty-foot storage cars.

Service by full and apartment railway post-office cars and storage cars shall include the carriage therein of all mail matter, equipment, and supplies for the mail service and the employees of the Postal Service or Post Office Department, as shall be directed by the Postmaster General to be so carried.

Closed-pouch mail service shall be the transportation and handling by railroad employees of mails on trains on which full or apartment railway post-office cars are not authorized, except as hereinbefore provided. The authorizations for closed-pouch service shall be for units of seven feet and three feet in length, both sides of car.

The rates of payment for the services authorized in accordance with this section shall be as follows, namely:

For full railway post-office car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding $4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

For apartment railway post-office car mail service at not exceeding 11 cents for each mile of service by a thirty-foot apartment car and 6 cents for each mile of service by a fifteen-foot apartment car.

In addition thereto he may allow not exceeding $2.75 as a combined initial and terminal rate for each one-way trip of a thirty-foot apartment car and $2 as a combined initial and terminal rate for each one-way trip of a fifteen-foot apartment car.

For storage-car mail service at not exceeding 21 cents for each mile of service by a sixty-foot car.

In addition thereto he may allow not exceeding $4.25 as a combined initial and terminal rate for each one-way trip of a sixty-foot car.

Where authorizations are made for cars of the standard lengths of sixty, thirty, and fifteen feet, as provided by this section, and the railroad company is unable to furnish such cars of the length authorized, but furnishes cars of lesser length than those authorized, but which are determined by the department to be sufficient for the service, the Postmaster General may accept the same and pay only for the actual space furnished and used, the compensation to be not exceeding pro rata of that provided by this section for the standard length so authorized: *Provided,* That the Postmaster General may accept cars and apartments of greater length than those of the standard requested, but no compensation shall be allowed for such excess lengths.

For closed-pouch service, at not exceeding 1½ cents for each mile of service when a three-foot unit

is authorized, and 3 cents for each mile of service when a seven-foot unit is authorized.

In addition thereto he may allow not exceeding 25 cents as the combined initial and terminal rate for each one-way trip of a three-foot unit of service and 50 cents as a combined initial and terminal rate for each one-way trip of a seven-foot unit of service.

Railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress, on the condition that the mails should be transported over their roads at such price as Congress should by law direct, shall receive only eighty per centum of the compensation otherwise authorized by this section.

The initial and terminal rates provided for herein shall cover expenses of loading and unloading mails, switching, lighting, heating, cleaning mail cars, and all other expenses incidental to station service and required by the Postmaster General in connection with the mails that are not included in the car-mile rate. The allowance for full railway post-office cars, apartment railway post-office cars, and storage cars may be varied in accordance with the approximate difference in their respective cost of construction and maintenance [p. 426].

In computing the car miles of the full railway post-office cars and apartment railway post-office cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space to be computed in both directions, unless otherwise mutually agreed upon.

In computing the car miles of storage cars, the maximum space authorized in either direction of a round-trip car run shall be regarded as the space

to be computed in both directions, unless the car be used by the company in the return movement, or otherwise mutually agreed upon.

New service and additional service may be authorized at not exceeding the rates herein provided, and service may be reduced or discontinued with pro rata reductions in pay, as the needs of the Postal Service may require: *Provided,* That no additional pay shall be allowed for additional service unless specifically authorized by the Postmaster General.

The Postmaster General is authorized to make special contracts with the railroad companies for the transportation of the mails where in his judgment the conditions warrant the application of higher rates than those herein specified, and make report to Congress of all cases where such special contracts are made and the terms and reasons therefor.

All cars or parts of cars used for the Railway Mail Service shall be of such construction, style, length, and character, and furnished in such manner as shall be required by the Postmaster General, and shall be constructed, fitted up, maintained, heated, lighted, and cleaned by and at the expense of the railroad companies. No pay shall be allowed for service by any railway post-office car which is not sound in material and construction and which is not equipped with sanitary drinking-water containers and toilet facilities, nor unless such car is regularly and thoroughly cleaned. No pay shall be allowed for service by any wooden full railway post-office car unless constructed substantially in accordance with the most approved plans and speci-

fications of the Post Office Department for such type of cars, nor for service by any wooden full railway post-office car run in any train between adjoining steel cars, or between the engine and a steel car adjoining. After the first of July, nineteen hundred and seventeen, the Postmaster General shall not approve or allow to be used, or pay for service by, any full railway postoffice car not constructed of steel or steel underframe or equally indestructible material; and all full railway post-office cars accepted for this service and contracted for by the railroad companies hereafter shall be constructed of steel. Until July first, nineteen hundred and seventeen, in cases of emergency and in cases where the necessities of the service require it, the Postmaster General may provide for service by full railway post-office cars of other than steel or steel underframe construction, and fix therefor such rate of compensation within the maximum herein provided as shall give consideration to the inferior character of construction, and the railroad companies shall furnish service by such cars at such rates so fixed.

Service over property owned or controlled by another company or a terminal company shall be considered service of the railroad company using such property and not that of the other or terminal company: *Provided,* That service over land-grant road shall be paid for as herein provided [p. 427].

Railroad companies carrying the mails shall furnish all necessary facilities for caring for and handling them while in their custody. They shall furnish all cars or parts of cars used in the transportation and distribution of the mails, except as

herein otherwise provided, and place them in stations before the departure of trains at such times and when required to do so. They shall provide station space and rooms for handling, storing, and transfer of mails in transit, including the separation thereof, by packages for connecting lines, and such distribution of registered mail in transit as may be necessary, and for offices for the employees of the Railway Mail Service engaged in such station work when required by the Postmaster General, in which mail from station boxes may be distributed if it does not require additional space.

If any railroad company carrying the mails shall fail or refuse to provide cars or apartments in cars for distribution purposes when required by the Postmaster General, or shall fail or refuse to construct, fit up, maintain, heat, light, and clean such cars and provide such appliances for use in case of accident as may be required by the Postmaster General, it shall be fined such reasonable sum as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General shall in all cases decide upon what trains and in what manner the mails shall be conveyed. Every railroad company carrying the mails shall carry on any train it operates, and with due speed, all mailable matter, equipment, and supplies directed to be carried thereon. If any such railroad company shall fail or refuse to transport the mails, equipment, and supplies when required by the Postmaster General on any train or trains it operates, such company shall be fined such reasonable amount as may, in the discretion of the Postmaster General, be deemed proper.

The Postmaster General may make deductions from the pay of railroad companies carrying the mails under the provisions of this section for reduction in service or infrequency of service where, in his judgment, the importance of the facilities withdrawn or reduced requires it, and impose fines upon them for delinquencies. He may deduct the price of the value of the service in cases where it is not performed, and not exceeding three times its value if the failure be occasioned by the fault of the railroad company.

The provisions of this section shall apply to service operated by railroad companies partly by railroad and partly by steamboats.

The provisions of this section respecting the rates of compensation shall not apply to mails conveyed under special arrangement in freight trains, for which rates not exceeding the usual and just freight rates may be paid, in accordance with the classifications and tariffs approved by the Interstate Commerce Commission.

Railroad companies carrying the mails shall submit, under oath, when and in such form as may be required by the Postmaster General, evidence as to the performance of service.

The Postmaster General shall, from time to time, request information from the Interstate Commerce Commission as to the revenue received by railroad companies from express companies for services rendered in the transportation of express matter, and may, in his discretion, arrange for the transportation of mail matter other than of the first class at rates not exceeding those so ascertained and reported to him, and it shall be the duty of the rail-

road companies to carry such mail matter at such rates fixed by the Postmaster General.

The Postmaster General is authorized, in his discretion, to petition the Interstate Commerce Commission for the determination of a postal carload or less-than-carload rate for transportation of mail matter of the fourth class and periodicals, and may provide for and authorize such transportation, when practicable, at such rates, and it shall be the duty of the railroad companies to provide and perform such service at such rates and on the conditions prescribed by the Postmaster General [p. 428].

The Postmaster General may, in his discretion, distinguish between the several classes of mail matter and provide for less frequent dispatches of mail matter of the third and fourth classes and periodicals when lower rates for transportation or other economies may be secured thereby without material detriment to the service.

The Postmaster General is authorized to return to the mails, when practicable for the utilization of car space paid for and not needed for the mails, postal cards, stamped envelopes, newspaper wrappers, empty mail bags, furniture, equipment, and other supplies for the Postal Service.

The Postmaster General, in cases of emergency between October first and April first of any year, may hereafter return to the mails empty mail bags and other equipment theretofore withdrawn therefrom as required by law, and, where such return requires additional authorization of car space under the provisions of this section, to pay for the transportation thereof as provided for herein out

of the appropriation for inland transportation by railroad routes.

The Postmaster General may have the weights of mail taken on railroad mail routes, and computations of the average loads of the several classes of cars and other computations for statistical and administrative purposes made at such times as he may elect, and pay the expense thereof out of the appropriation for inland transportation by railroad routes.

Pending the decision of the Interstate Commerce Commission, as hereinafter provided for, the existing method and rates of railway mail pay shall remain in effect, except on such routes or systems as the Postmaster General shall select, and to the extent he may find it practicable and necessary to place upon the space system of pay in the manner and at the rates provided in this section, with the consent and approval of the Interstate Commerce Commission, in order to properly present to the Interstate Commerce Commission the matters hereinafter referred thereto: *Provided,* That if the final decision of the Interstate Commerce Commission shall be adverse to the space system, and if the rates established by it under whatever method or system is adopted shall be greater or less than the rates under this section, the Postmaster General shall readjust the compensation of the carriers on such selected routes and systems in accordance therewith, from the dates on which the rates named in this section became effective.

All railway common carriers are hereby required to transport such mail matter as may be offered for transportation by the United States in the manner, under the conditions, and with the service pre-

scribed by the Postmaster General and shall be entitled to receive fair and reasonable compensation for such transportation and for the service connected therewith.

The Interstate Commerce Commission is hereby empowered and directed as soon as practicable to fix and determine from time to time the fair and reasonable rates and compensation for the transportation of such mail matter by railway common carriers and the service connected therewith, prescribing the method or methods by weight, or space, or both, or otherwise, for ascertaining such rate or compensation, and to publish the same, and orders so made and published shall continue in force until changed by the commission after due notice and hearing.

In fixing and determining the fair and reasonable rates for such service the commission shall consider the relation existing between the railroads as public service corporations and the Government, and the nature of such service as distinguished, if there be a distinction, from the ordinary transportation business of the railroads [p. 429].

The procedure for the ascertainment of said rates and compensation shall be as follows:

Within three months from and after the approval of this Act, or as soon thereafter as may be practicable, the Postmaster General shall file with the commission a statement showing the transportation required of all railway common carriers, including the number, equipment, size, and construction of the cars necessary for the transaction of the business; the character and speed of the trains which are to carry the various kinds of mail; the service, both terminal and en route, which the carriers are

to render; and all other information which may be material to the inquiry, but such other information may be filed at any time in the discretion of the commmission.

The Postmaster General is authorized to employ such clerical and other assistance as shall be necessary to carry out the provisions of this section, and to rent quarters in Washington, District of Columbia, if necessary, for the clerical force engaged thereon, and to pay for the same out of the appropriation for inland transportation by railroad routes. The Postmaster General shall file with the commission a comprehensive plan for the transportation of the mails on said railways and shall embody therein what he believes to be the reasonable rate or compensation the said railway carriers should receive.

Thereupon the commission shall give notice of not less than thirty days to each carrier so required to transport mail and render service, and upon a day to be fixed by the commission, not later than thirty days after the expiration of the notice herein required, each of said carriers shall make answer and the commission shall proceed with the hearing as now provided by law for other hearings between carriers and shippers or associations.

All the provisions of the law for taking testimony, securing evidence, penalties, and procedure are hereby made applicable.

For the purpose of determining and fixing rates or compensation hereunder the commission is authorized to make such classification of carriers as may be just and reasonable and, where just and equitable, fix general rates applicable to all carriers in the same classification.

Pending such hearings, and the final determination of the question, if the Interstate Commerce Commission shall determine that it is necessary or advisable, in order to carry out the provisions of this section, to have additional and more frequent weighing of the mails for statistical purposes, the Postmaster General, upon request of the commission, shall provide therefor in the manner now prescribed by law, but such weighing need not be for more than thirty days.

At the conclusion of the hearing the commission shall establish by order a fair, reasonable rate or compensation to be received, at such stated times as may be named in the order, for the transportation of mail matter and the service connected therewith, and during the continuance of the order the Postmaster General shall pay the carrier from the appropriation herein made such rate or compensation.

Either the Postmaster General or any such carrier may at any time after the lapse of six months from the entry of the order assailed apply for a reexamination, and thereupon substantially similar proceedings shall be had with respect to the rate or rates for service covered by said application, provided said carrier or carriers have an interest therein.

For the purposes of this section the Interstate Commerce Commission is hereby vested with all the powers which it is now authorized by law to exercise in the investigation and ascertainment of the justness and reasonableness of freight, passenger, and express rates to be paid by private shippers [p. 430].

The Interstate Commerce Commission shall allow to railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress on condition that the mails should be transported over their roads at such price as Congress should by law direct only eighty per centum of the compensation paid other railroads for transporting the mails and all service by the railroads in connection therewith.

The existing law for the determination of mail pay, except as herein modified, shall continue in effect until the Interstate Commerce Commission under the provisions hereof fixes the fair, reasonable rate or compensation for such transportation and service.

That the appropriations for inland transportation by railroad routes and for railway post-office car service for the fiscal year ending June thirtieth, nineteen hundred and seventeen, are hereby made available for the purposes of this section.

That it shall be unlawful for any railroad company to refuse to perform mail service at the rates or methods of compensation provided by law when required by the Postmaster General so to do, and for such offense shall be fined $1,000. Each day of refusal shall constitute a separate offense [p. 431].

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